

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

UNITED STATES OF AMERICA,	*	CIVIL ACTION NO.
FOR THE USE AND BENEFIT OF	*	
CROSBY CONSTRUCTION SERVICES,	*	SECTION:
INC.	*	JUDGE
	*	
VERSUS	*	
	*	
RIGID CONSTRUCTORS, LLC and	*	SECTION:
PHILADELPHIA INDEMNITY	*	MAG. JUDGE:
INSURANCE COMPANY	*	

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**COMPLAINT AND JURY DEMAND**

**NOW INTO COURT**, through undersigned counsel, comes Plaintiff, the United States of America, for the use and benefit of Crosby Construction Services, Inc., and for its Complaint against Defendants Rigid Constructors, LLC, and Philadelphia Indemnity Insurance Company, avers upon information and belief as follows:

**JURISDICTION AND FACTUAL ALLEGATIONS**

I.

Plaintiff Crosby Construction Services, Inc. ("Crosby Construction"), is a Louisiana company in good standing, organized and existing under the laws of the State of Louisiana, with its principal place of business at Morgan City, Louisiana.

II.

Defendant Rigid Constructors, LLC ("Rigid"), is a Louisiana Limited Liability Company, organized and existing under the laws of the State of Louisiana, with its domicile address at 3091 Highway 104, Opelousas, Louisiana 70570, and its mailing address at P.O. Box 1171, Breaux

Bridge, Louisiana 70517. Rigid may be served through its Registered Agent, Cody Fortier, at 3091 Highway 104, Opelousas, Louisiana 70570.

III.

Defendant Philadelphia Indemnity Insurance Company (“PIIC”) is a foreign insurance company authorized to do and doing business within the State of Louisiana, with its principal place of business at One Bala Plaza, Suite 100, Bala Cynwyd, Pennsylvania 19004. As an out of state insurer, PIIC may be served through the Louisiana Secretary of State, R. Kyle Ardoin, P.O. Box 94125, Baton Rouge, LA 70804-9125.

IV.

This Court has jurisdiction over Crosby Construction’s Miller Act Claim pursuant to 40 U.S.C. § 3133(b)(3), and supplemental jurisdiction over all other claims in this action which arise out of the same transaction or occurrence pursuant to 28 U.S.C. § 1367.

V.

Venue is proper in the Western District of Louisiana as a portion of the work described below between Crosby Construction and Rigid was to be performed in and executed in the Western District of Louisiana.

VI.

On or about August 20, 2020, the United States Army Corps of Engineers (“USACE”), in connection with Solicitation No. W912HY20B0031, awarded Contract No. W912HY20C0028, to Rigid to act as general contractor for the project known as “Unrestricted Procurement for Houston Ship Channel, Texas Lost Lake Placement Area in Harris County, Texas” (“the Project”).

VII.

On or about August 11, 2020, Rigid obtained from PIIC a Miller Act Payment Bond in the penal sum of \$3,983,900.00 in connection with Contract No. W912HY20C0028. In the aforesaid bond, PIIC, as surety, agreed to be bound “jointly and severally” with Rigid, as principal, to make payments to all claimants as defined therein, for all labor and materials used or reasonably required for use in the performance of Rigid’s contract in the event that Rigid failed to make payment to such claimants. A copy of the August 11, 2020 bond is attached as Exhibit 1.

VIII.

On or about December 15, 2020, Rigid and Crosby Construction entered into a Master Subcontract Agreement for the performance of work on the Project. A copy of the contract executed by Crosby Construction is attached as Exhibit 2. As a party with a direct relationship with the contractor who procured the Miller Act Payment Bond [Rigid], Crosby Construction is a first tier contractor who is not required to give notice as a pre-condition to bringing a Miller Act civil action. 40 U.S.C. § 3133(b)(1).

IX.

Suit in this matter is timely filed under the Miller Act as it is filed less than one (1) year after the last labor was furnished on materials supplied by Crosby Construction to Rigid in connection with the Project. 40 U.S. C. § 3133(b)(4).

X.

Pursuant to the terms of the December 15, 2020 Master Subcontract Agreement, Crosby Construction provided labor, materials, and services in connection with the Project. Crosby Construction has performed all of its work in accordance with its contract with Rigid, but Rigid has failed to pay Crosby Construction what it owes Crosby Construction. Crosby Construction is

owed in excess of \$165,000.00, plus interest, costs, attorney's fees, and other amounts to be proven at trial.

### **COUNT I - MILLER ACT PAYMENT BOND**

#### **XI.**

Crosby Construction incorporates Paragraphs I through XI as if fully set out herein.

#### **XII.**

Crosby Construction had, and has a good faith belief that the labor, materials, and services it provided were for the work specified for the Project and such labor, materials, and services were actually provided for the Project.

#### **XIII.**

PIIC is obligated, pursuant to the August 11, 2020 Payment Bond to pay Crosby Construction for the labor, materials, and services it furnished in prosecution of the work provided for in the Master Service Contract between Rigid and Crosby Construction. To date, PIIC has failed to fulfill its obligation under the bond to pay Crosby Construction for labor, materials, and services furnished in prosecution of its work for the Project.

#### **XIV.**

Crosby Construction is entitled to payment from PIIC pursuant to the Miller Act, 40 U.S.C. § 3133.

#### **XV.**

As a result of PIIC's failure to pay, Crosby Construction has been damaged in a sum in excess of \$165,000.00, plus interest, costs, attorney's fees and other amounts to be proven at trial. Crosby Construction's damages will be proven at trial.

XVI.

Crosby Construction prays for trial by jury on its Miller Act claim.

**COUNT II - BREACH OF CONTRACT**

Crosby Construction reasserts and reavers all of the allegations contained in Paragraphs I-XVI as if copied herein.

XVII.

Crosby Construction provided labor, materials, and services to Rigid pursuant to the December 15, 2020 Master Subcontract Agreement in connection with the work on the Project. Crosby Construction has completed its work in a good and orderly fashion, and has billed Rigid for such labor, materials, and services. Despite multiple amicable demands for payment, Crosby Construction has not been paid for its work pursuant to the terms of the Master Service Agreement between the parties.

XVIII.

The Master Service Agreement between the parties requires Rigid to pay Crosby Construction for the labor, materials, and services it provided to Rigid in connection with Crosby Construction's work on the Project. Rigid's failure to pay Crosby Construction constitutes a breach of the agreement entered into between the parties. As a result of that breach of contract, Rigid is liable to Crosby Construction for breach of contract in a sum not less than \$165,000.00, plus interest, costs, attorney's fees, and other damages that may be proven at trial.

XIX.

Crosby Construction prays for trial by jury on its breach of contract claim.

**WHEREFORE**, Crosby Construction prays that after due proceedings had, its Complaint and Jury Demand be deemed good and sufficient and that there be judgment herein against

Philadelphia Indemnity Insurance Company and Rigid Constructors, LLC, for the total amount due Crosby Construction Services, Inc., in connection with its December 15, 2020 Master Subcontract Agreement with Rigid Constructors, plus interest, costs, attorney's fees, and for all other relief as Crosby Construction may be entitled to receive and this Court competent to grant.

Respectfully Submitted:

**REICH, ALBUM & PLUNKETT L.L.C.**

*s/ Lawrence R. Plunkett, Jr.*

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*Attorneys for Crosby Construction Services, Inc.*

CROSBY CONSTRUCTION SERVICES,  
INC., WILL SERVE:

RIGID CONSTRUCTORS, LLC

Through its Registered Agent,

Cody Fortier

3091 Highway 104

Opelousas, LA 70570

And

PHILADELPHIA INDEMNITY

INSURANCE COMPANY

Through the Louisiana Secretary of State,

R. Kyle Ardoin

P.O. Box 94125

Baton Rouge, LA 70804-9125